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CONFIDENTIAL AND PURSUANT TO CONCILIATION

October 30, 1998

Marianne Abely
Office of General Counsel
Federal Election Commission
999 E. Street N.W.
Washington, D.C. 20463

Re: MUR: 4621

Dear Ms. Abely:

This is in response to your request for additional information regarding Congressman Merrill Cook ("Cook") and the Merrill Cook for Congress Committee's ("Cook Committee") dealings with R.T. Nielson Company ("RTN") during the 1996 campaign season. You have also requested information regarding Cook and the Cook Committee's dealings with Phillips, Twede, Spencer ("PTS") during the same time period. I have forwarded your requests regarding dealings with PTS to Avis Lewis, treasurer of the Cook Committee. As soon as I receive information in response, I will transmit it to you.

In your consideration of information regarding the Cook and the Cook Committee's dealings with RTN, it should be remembered that reporting and calculating debts and expenditures to RTN were made difficult by what the FEC has recognized as confusing billing by RTN. Cook and the Cook Committee were sent invoices which contained cryptic and vague descriptions, inaccurate descriptions, duplicate charges, charges for expenses incurred by RTN's other clients, and charges that either were not supported by the Services Agreement or were directly contrary to the Services Agreement. Invoice number 96153, dated May 21, 1996, was initially sent to the Cook Committee with only the

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vague description of "Miscellaneous Office." It later turned out the Invoice number 96153 was sent not for RTN's office supplies, but instead for a list purchased from the Salt Lake County Clerk's office. Duplicate charges appeared on Invoice numbers 96169 and 96235. Invoice number 96169 charged \$305.61 for postage which appeared on Invoice number 96165. Invoice number 96235 contained a \$184.90 charge for films and scans for which Cook and the Cook Committee were billed on Invoice number 96212. RTN's bookkeeper has admitted that the Cook Committee was charged for printing that was done for another client. Also, Invoice numbers 97106 and FC6 contain charges for consulting fees, equipment and office rent and finance charges that were not supported by the Services Agreement. Moreover, in January of 1997, RTN altered Invoice number 96199, originally for a \$50,000 "Bonus for Primary Election," to appear as a fee for consulting services. In addition to these problems, RTN sent and later voided Invoice numbers 96114, 96115, 96172, 96182, 96199, 96200 and 96244. Consideration of such illogical, contractually unsupported and confusing billing practices illustrates the difficulty the Cook Committee encountered in reporting and calculating debts and expenditures to RTN.

In your first request, you asked for the numbers of the checks which the Cook Committee used to pay consulting fees after the Republican Convention in May of 1996. Although Cook and the Cook Committee paid all amounts owed under their Services Agreement with RTN, including the \$4,000 per month consulting fees, the checks used to pay the consulting fees cannot be identified through any notations on checks. This is because RTN never sent invoices to the Cook Committee specifically requesting payments for the \$4,000 per month consulting fees, and notations on checks recorded, generally, invoice numbers. Nevertheless, the consulting fees were paid through checks that also went to pay for other items agreed to in the Services Agreement.

During the period between May 4, 1996 and the Republican primary election, June 26, 1996, Cook and the Cook Committee paid the \$4,000 per month consulting fees along with payments for other services to be performed during that period. In the aggregate, Cook and the Cook Committee paid \$49,999.65 for RTN's services during the period. This amount was agreed by Cook and RTN in early May of 1996 to be an estimate of all amounts owed, except out-of-pocket expenses, for the period between the Republican Convention and primary election. This included the \$4,000 per month consulting

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fees. The \$49,999.65 amount was paid with check numbers 136, 140, 163, 167, 182 and 195.

Following the Republican primary election, the \$4,000 per month consulting fees were paid through two or more of the following checks numbered 212, 215, 216, 217, 227, 232, 246, 252 and 263. The amounts of these checks total \$60,500. After the primary election, consistent with its practice before that election, RTN did not submit invoices specifically for the monthly consulting fees. Nevertheless, Cook and the Cook Committee paid such consulting fees, as well as amounts for other services under the Services Agreement, with the above numbered checks.

Although she recorded Invoice numbers 96199 or 96200 on check numbers 212, 215, 216, 217, 227, 232, 246, 252 and 263, the Cook Committee's treasurer intended that these checks pay amounts actually owed under the Services Agreement, including the \$4,000 per month consulting fees. Invoice number 96199 purportedly sought payment of a \$50,000 "Bonus for Primary Election," and Invoice number 96200 purportedly sought payment of a \$100,000 "Consulting Fee for General Election." These checks, however, were issued not for a bonus or a \$100,000 consulting fee. Neither of these charges are supported by the Services Agreement between Cook and the Cook Committee and RTN, and no other agreement for consulting fees or for a primary election win bonus was agreed to. Moreover, RTN instructed Cook to ignore these invoices because they did not reflect amounts owed by Cook and the Cook Committee. The reason that the Cook Committee's treasurer noted Invoice numbers 96199 and 96200 on the checks was because RTN failed to submit invoices specifically for the \$4,000 per month consulting fees and because she wanted to connect each payment made to RTN with an invoice from RTN.

You also requested information regarding Invoice number 96200 from RTN. Specifically, you wanted to know if 96200 was voided, if so why and if paid, when. RTN instructed Cook to ignore Invoice number 96200, which sought payment of a \$100,000 "Consulting Fee for General Election." As discussed above, the invoice did not reflect actual amounts owed by the Cook campaign under the Services Agreement, and no other agreement for consulting fees was agreed to. The Cook Committee did issue checks to RTN which bear notations referring to Invoice number 96200. These payments were made on October 21, 1996, check number 252, and October 29, 1996, check number 263. As stated above, however, neither of these checks were intended to pay a \$100,000

consulting fee, and neither constitute evidence of Cook and the Cook Committee's agreement to pay such amount. These checks were intended to pay amounts owed under the Services Agreement, including the \$4,000 per month consulting fees. It is notable that the amount of the checks which refer to Invoice number 96200 total \$16,000. This was the amount owed for consulting services under the Services Agreement for the general election phase of the campaign, which was July, August, September and October, 1996.

You also asked about check numbers 129 and 132 for \$8,000 and \$27,000 and dated May 2 and May 7, 1996, respectively. You asked what invoices these checks were intended to pay. You also asked about payments of Invoice number 96118, which was sent on or about March 4, 1996, to obtain payment of \$40,000 for consulting services through May 4, 1996. Specifically, you mentioned that check number 123, dated April 29, 1996, for \$2,000, notes that \$6,000 remained to be paid on Invoice number 96118, and you asked whether that \$6,000 had been paid, and if so when and with what checks. The remaining \$6,000 balance was paid with check number 129 or check number 132. These checks were also intended to pay Invoice numbers 96138, 96141, 96142, 96143, 96144 and 96145. The total of the \$6,000 balance remaining on Invoice number 96118 and the other invoices, as of May 7, 1996, was \$34,911.24.

Even RTN agrees that Invoice number 96118 was paid in full. In the lawsuit brought by RTN, it does not contend that any balance remains owing on this invoice. Moreover, its bookkeeper admitted that Invoice number 96118 was paid in full.

You also requested whether the Cook Committee prepaid RTN for any expenses. Under the Services Agreement, Cook and the Cook Committee were not required to prepay RTN for any services or expenses. Prepayments, however, probably were made between May 15, 1996, and the Republican primary election, June 26, 1996. As discussed above, Cook and RTN had agreed to a \$50,000 estimate of the costs of campaign services between May 4, 1996 and June 26, 1996. Included in the estimate were amounts owed for consulting, polling, advertising and any other services incidental thereto. The Cook Committee agreed to pay this estimate to RTN in six installments. Thus, initial installments occurred before much of the consulting, polling, advertising and other services were performed.

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Finally, you requested identifications of payments and invoices which are in dispute between Cook and the Cook Committee and Nielson. The payments in dispute are reflected in check numbers 212, 215, 216, 217, 227, 232, 246, 252 and 263. The checks note either Invoice number 96199 or Invoice number 96200. As discussed previously, these invoices were the \$100,000 "Consulting Fee for General Election" and the \$50,000 "Bonus for Primary" charges which RTN instructed Cook to ignore because they did not reflect actual amounts owed under the Services Agreement. In the litigation, however, RTN contends that these invoices evidence oral agreements between RTN and Cook and the Cook Committee for additional compensation. RTN further contends that the checks which note these invoices evidence Cook and the Cook Committee's agreement to pay the additional amounts. Cook and the Cook Committee, for reasons discussed earlier, vigorously disagree.

In addition to payments, certain invoices are also in dispute. RTN contends that Cook and the Cook Committee owe amounts toward Invoice numbers 96145, 96143, 96144, 96173, 96199, 96357, 96356, 96184, 96212, 96213, 96235, 96256, 96359, 96366, 97112, 96355, 96367, 96372, 97106, and 97106. Cook and the Cook Committee deny that they owe RTN any amounts toward these invoices.

Also, Cook and the Cook Committee contend that RTN overcharged for fundraising in Invoice numbers 96355, 96367, 96372 and 97106. Under the Services Agreement, RTN was entitled to commissions on funds raised only from political action committees and only on contributions that it had a hand in soliciting. In these invoices, RTN improperly sought commissions on funds raised from political party committees and on funds raised wholly through the efforts of others. The amounts improperly charged in these invoices total \$11,317.50.

Cook and the Cook Committee also contend that RTN sent invoices that contained charges for items included in previous invoices. In Invoice number 96169, RTN charged \$305.61 for postage even though Invoice number 96165 contained the exact same charge. In addition, RTN's Invoice number 96235 contained a \$184.90 charge for films and scans which it had already included in Invoice number 96212.

Cook and the Cook Committee also contend that RTN overcharged them for staff time, office rent and equipment rent. Under the Services Agreement,

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RTN was to be compensated for staff time and office and equipment rent through the \$40,000 and, after May 4, 1998, \$4,000 per month consulting fees. Nevertheless, in addition to charging for consulting, RTN sent Invoice numbers 96116, 96139, 96142, 96143, 96169, 96170, 96171, 96184, 96213, 96256, 96257 and 96359, which included charges for staff time, and Invoice number 97106, which included charges for office and equipment rent.

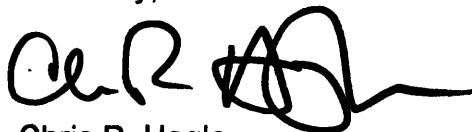
RTN also sent invoices which improperly sought payment for get-out-the-vote telephone calls that it never made. Under the Services Agreement, RTN was entitled to \$.91 for each of the calls that it made. RTN, however, billed Cook and the Cook Committee for the calls made by Cook campaign volunteers. The invoices are numbered 96173 and 96356.

Furthermore, RTN charged Cook and the Cook Committee for interest even though the Services Agreement does not authorize charges for interest. On January 20, 1997, RTN sent invoice FC6 which charged \$11,991.32 for interest. The Services Agreement, however, does not authorize any charge for interest.

Under the terms of the Services Agreement, the most that Cook and the Cook Committee should have been charged during the 1996 campaign is \$223,873.88. Instead, they were charged \$423,889.93. Cook and the Cook Committee paid RTN \$229,657.21. Thus, under the Services Agreement, Cook and the Cook Committee were greatly overbilled, and RTN actually owes Cook and the Cook Committee \$5,783.33.

I hope this letter provides the information you requested regarding Cook and the Cook Committee's dealings with RTN during the 1996 campaign. If you have any further questions, please call me.

Sincerely,



Chris R. Hogle

CRH/mjg

cc: Jay D. Gurmankin
Merrill Cook